

aviation. My record with labor is just as good as the next fellow's, and I will put mine, my percentage, up with that of the Senator from Illinois as to my support for labor.

But this is one time I want the aviation industry of this country to continue to be the best in the world. If they are going to take this stance and say we are going to bring the FAA bill down—that is what the Senator from Illinois is doing—then we will be here next week, in my opinion. We will probably vote on Monday to proceed. We then lay a cloture motion down and they will be around here a lot longer than they had expected.

If that is the procedure, if you want to get the fur up, that is fine. It suits me fine. I understand it, not to say that I like it. I understand the procedure and I understand the rules. I understand the rules pretty well.

So, I hope we can work something out, I say to the majority leader. I am prepared to offer some objections myself here.

Mr. SIMON. If the majority leader will yield for 1 minute?

Mr. LOTT. I will be glad to.

Mr. SIMON. I am all for the FAA bill. What was put on was neither in the House nor in the Senate on this bill. That can be put on—if you drop this provision, it can be put on the continuing resolution. There are a variety of ways of handling this.

I hope we can get it worked out.

Mr. FORD. I say to my friend, you can put this bill into the continuing resolution now.

Mr. SIMON. What we should not do is tack on a major labor-management provision on this thing—without hearings on what is a very controversial provision, I might add.

#### UNANIMOUS-CONSENT REQUEST— H.R. 1617

Mr. LOTT. Mr. President, I ask unanimous consent the Senate now turn to the consideration of the conference report to accompany H.R. 1617, the work force development bill; the reading be considered waived, all points of order be waived, the conference report be considered as agreed to, with a motion to reconsider laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. SIMON. Mr. President, reserving the right to object, and I shall object on behalf of the ranking member, Senator KENNEDY and myself. I do object. There are a lot of good things in this. There are a lot of things we have been working on a long time. I regret that it is necessary, but I do object.

The PRESIDING OFFICER. Objection is heard.

#### UNANIMOUS-CONSENT REQUEST— S. 1237

Mr. LOTT. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Calendar No.

545, S. 1237, a bill to amend certain provisions of law relating to child pornography; further, that a substitute amendment which is at the desk, offered by Senators HATCH, BIDEN, and others, be considered and agreed to, the bill be deemed read a third time and passed as amended, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. SIMON. Mr. President, I am reserving the right to object. I have always opposed mandatory minimums. They are great politics. They are bad justice.

The Chief Justice of the U.S. Supreme Court, William Rehnquist, has admonished Congress not to put these mandatory minimums on. There are some particularly harsh ones here.

There is much in this bill to be commended. But if we can take the mandatory minimums off, I will remove any objection right away. Clearly we want to do everything we can to stop child pornography. But to say, for example, to an 18-year-old who is guilty of pornography with a 16-year-old, for two offenses you get life in prison, which is what this bill mandates—I am not sure that serves the cause of justice. I think we ought to leave that up to the judges, as Chief Justice Rehnquist has suggested. So I do object.

The PRESIDING OFFICER. Objection is heard.

#### UNANIMOUS-CONSENT REQUEST— H.R. 2823

Mr. LOTT. Mr. President, I ask unanimous consent that H.R. 2823, the International Dolphin Conservation Program Act, which has been laboriously negotiated and supported by, for instance, a call I received from the Ambassador to Mexico, former Congressman Jim Jones, and supported by the administration actively, I believe, by Vice President AL GORE.

I, therefore, ask unanimous consent that it be discharged from the Commerce Committee; that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; and that the motion to reconsider be laid upon the table.

Mrs. BOXER. Mr. President, reserving the right to object, I do plan to object to this, and I would like to take some time to explain it.

Mr. President, today, the Majority Leader asked unanimous consent to take up a bill—the Stevens/Breaux/Gilchrest bill—that would significantly weaken protections for dolphins in the eastern tropical Pacific Ocean by re-writing—gutting—the “dolphin safe” tuna labeling law that Senator BIDEN and I wrote and pushed into law in 1990.

Today, the \$1 billion U.S. canned tuna market is a “dolphin safe” market. Consumers know that the “dolphin safe” label means that dolphins were not harassed or killed.

Our definition of dolphin safe became law for all the right reasons. Those reasons are still valid today:

First, for the consumers, who were opposed to the encirclement of dolphins with purse seine nets and wanted guarantees that the tuna they consume did not result in harassment, capture and killing of dolphins;

Second, for the U.S. tuna companies, who wanted a uniform definition that would not undercut their voluntary efforts to remain dolphin safe;

Third, for the dolphins, to avoid harassment, injury and deaths by encirclement; and

Fourth, for truth in labelling.

Our law has been a huge success. Annual dolphin deaths have declined from 60,000 in 1990 to under 3,000 in 1995. Why mess with success?

The Stevens/Breaux/Gilchrest bill would permit more dolphins to be killed than are killed now.

The bill promotes the chasing and encirclement of dolphins, a tuna fishing practice that is very dangerous to dolphins. It does so by gutting the meaning of “dolphin safe”, the label which must appear on all tuna sold in the United States. The “dolphin safe” label has worked: it doesn't need to be “updated”, as the bill's sponsors claim.

A number of arguments have been made in support of the Stevens/Breaux/Gilchrest bill which I would like to refute at this time.

Bill supporters claim that it is supported by the environmental community. In fact, only a few environmental groups support the Stevens/Breaux/Gilchrest bill, while over 85 environmental, consumer, animal protection, labor and trade groups oppose the Stevens/Breaux/Gilchrest bill. I ask unanimous consent that a list of these groups be printed in the RECORD at this point. The fact is that the vast majority of environmental organizations in this country and around the world oppose the Stevens/Breaux bill.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Action for Animals, California  
Americans for Democratic Action  
American Society for the Prevention of Cruelty to animals  
American Oceans Campaign  
American Humane Association  
Americans for Democratic Action  
Animal Protection Institute  
Ark Trust  
Australians for Animals  
Bellerive Foundation, Italy & Switzerland  
Born Free Foundation  
Brigantine New Jersey Marine Mammal Stranding Center  
Cetacea Defence  
Chicago Animal Rights Coalition  
Clean Water Action  
Coalition for No Whales in Captivity  
Coalition Against the United States Exporting Dolphins, Fl.  
Coalition for Humane Legislation  
Colorado Plateau Ecology Alliance  
Committee for Humane Legislation  
Community Nutrition Institute  
Defenders of Wildlife  
Dolphin Project Interlock International  
Dolphin Connection, California  
Dolphin Freedom Foundation  
Dolphin Defenders, Florida  
Dolphin Data Base

Dolphin Alliance, Inc.  
 Doris Day Animal League  
 Earth Island Institute  
 Earth Trust  
 Education and Action for Animals  
 Endangered Species Project, Inc.  
 European Network for Dolphins  
 Federation for Industrial Retention and Renewal  
 Foundation Brigitte Bardot, France  
 Friends of the Earth  
 Friends of Animals  
 Friends for the Protection of Marine Life  
 Friends of the Dolphins, California  
 Fund for Animals  
 Fundacion Fauna Argentina  
 Hoosier Environmental Council  
 Humane Society of Canada  
 Humane Society of the Midlands  
 Humane Society International  
 Humane Society of the United States  
 In Defense of Animals  
 Institute for Agriculture and Trade Policy  
 Interhemispheric Resource Center  
 International Brotherhood of Teamsters  
 International Dolphin Project  
 International Wildlife Coalition  
 International Union of Electronic Workers  
 Irish Whale and Dolphin Society  
 Lifeforce Foundation  
 Marine Green Party  
 Marine Mammal Laboratory  
 Marine Mammal Fund  
 Massachusetts Audubon Society  
 Midwest Center for Labor Research  
 National Consumers League  
 National Family Farm Coalition  
 Oil Chemical and Atomic Workers International Union  
 Pacific Orca Society, Canada  
 People for the Ethical Treatment of Animals  
 Performing Animal Welfare Society  
 Progressive Animal Welfare Society  
 Public Citizen's Global Trade Watch  
 Pure Food Campaign  
 Reearth  
 Reseau-Cetaces, France  
 San Diego Animal Advocates  
 Sierra Club  
 Society for Animal Protective Legislation  
 South Carolina Association for Marine Mammal Protection  
 South Carolina Humane Society of Columbia  
 The Free Corky Project  
 UNITE!  
 Vier Pfoten, Austria and Germany  
 Whale Tales Press  
 Whale Rescue Team  
 Whale and Dolphin Welfare Committee of Ireland  
 Whale and Dolphin Society of Canada  
 Working Group for the Protection of Marine Mammals, Switzerland  
 Zoocheck, Canada

U.S. DEPARTMENT OF STATE,  
 Washington, DC, September 11, 1996.

Hon. BARBARA BOXER,  
 U.S. Senate.

DEAR SENATOR BOXER: Thank you for your letter of August 8 regarding the Declaration of Panama.

As you are aware, representatives of the United States and 11 other nations signed the Declaration of Panama on October 4, 1995. In our judgment, the Declaration represents a significant step forward in the efforts of nations whose vessels fish for tuna in the Eastern Tropical Pacific Ocean to protect dolphins and the marine environment as a whole.

By signing the Declaration of Panama, these nations have formally announced their intention to conclude a binding legal instrument incorporating the provisions of the 1992 La Jolla Agreement on dolphin protection in this fishery, as supplemented and strengthened by additional measures to protect dol-

phins as set forth in the Panama Declaration.

Thus, the Panama Declaration itself is not a legally binding international agreement, but rather a commitment to conclude such an agreement. Fulfillment of that commitment is expressly contingent upon—and only upon—certain changes in U.S. law. Those changes would occur with enactment of S. 1420 or its companion bill, H.R. 2823, which recently passed the House of Representatives with strong bipartisan support.

Once such an agreement is concluded, the Department would transmit it to Congress, as required by the Case-Zablocki Act.

I hope this responds to your inquiry. We would be happy to provide you with any additional information, or to discuss with you or your staff the Administration's support for the Panama Declaration and the enactment of H.R. 2823/S. 1420.

Sincerely,

BARBARA LARKIN,  
 Assistant Secretary, Legislative Affairs.

U.S. SENATE,  
 Washington, DC, August 8, 1996.

Mr. MICHAEL J. MATHESON,  
 Acting Legal Adviser, Department of State,  
 Washington, DC.

DEAR MR. MATHESON: We write regarding the "Declaration of Panama," a document signed on October 4, 1995 by several countries, including the United States. This declaration addresses measures regarding the protection of dolphins in the Eastern Pacific Ocean. In this declaration, signed for the United States by Brian Hallman of the Office of Marine Conservation, the United States and 11 other nations announced their intention to formalize another agreement (the "La Jolla Agreement") as a "binding legal instrument."

So that we may understand the legal significance of this document, as interpreted by your office, we request answers to the following questions:

1. Does the Department regard the Declaration of Panama as a binding international agreement?

2. If so, please provide a legal analysis discussing the factors pertinent to determining whether a document is a binding international agreement. Such analysis should include, at a minimum, an assessment of the factors set forth in 22 C.F.R. §181.2 (State Department regulations regarding the coordination and reporting of international agreements).

3. If the Declaration of Panama is a binding international agreement, when did this agreement enter into force, and by what means?

4. If the Declaration of Panama is a binding international agreement, has the agreement been transmitted to Congress pursuant to the Case-Zablocki Act, 1 U.S.C. §112b? If it has not been so transmitted, why has it not been?

Thank you for your attention to this matter. We would appreciate a reply prior to the reconvening of Congress in early September.

Sincerely,

BARBARA BOXER,  
 U.S. Senator.  
 JOSEPH R. BIDEN, Jr.,  
 U.S. Senator.

Mrs. BOXER. The bill's supporters say that it is unreasonable for the United States to continue to impose a unilateral embargo on other fishing nations that wish to sell tuna in our country. I agree. It is time to lift the embargo. That is why Senator BIDEN and I, and a number of our colleagues, introduced legislation last year that

would lift the country by country embargo against tuna that is caught by dolphin safe methods. Our bill would give all tuna fishermen the opportunity to export to the U.S. market as long as they use dolphin safe practices. In other words, we would open the U.S. market and comply with international trade agreements without gutting U.S. dolphin protection laws.

We have offered repeatedly over the past year to sit down and negotiate a compromise with the administration. We have stated repeatedly that we agree it is appropriate to lift the embargo. We want to reach a compromise that is in the best interest of the American consumer, dolphins, and our U.S. tuna processing industry.

The bills supporters believe that we should return to chasing and setting nets on dolphins because bycatch of other marine species is minimized. I believe that in order to sustain our renewable marine resources, we need to take a comprehensive ecosystem approach. I also recognize that management of a single species does not always produce benefits for the entire ecosystem. The bycatch of juvenile tuna and other marine species including endangered turtles, is an issue of concern that must be addressed. However, the bycatch arguments used by supporters of this bill are not based on solid science. We need more research before we can establish that bycatch is a problem.

Under the scheme supported by this bill, only one observer would be required on each tuna fishing boat. Now that may sound reasonable, but what you may not know is that the nets that are used to catch tuna are huge: a mile-and-a-half long. How can we expect one single observer to make sure that no dolphins die?

I was very surprised to hear the Senator from Louisiana earlier today repeatedly say how shameful it was that the Senate could not take up the tuna-dolphin treaty. The Senator suggested that unless the Senate passes the bill the majority leader tried to bring up, the United States will somehow be renegeing on binding international agreements. This is simply untrue. It is a completely inaccurate characterization of the issue.

I know the Senator from Louisiana to be an honorable man and I would never accuse him of making a false statement knowingly. In this case, therefore, he must have been seriously misled and misinformed by those who wish to change the law, because, Mr. President, there is no tuna-dolphin treaty.

No treaty was signed by the United States or any other nation on the subject of tuna fishing and the killing of dolphins.

No treaty was submitted to the Senate for ratification, as required by the Case-Zablocki Act.

No treaty was referred to the Senate Foreign Relations Committee.

None of these things happened because there is no treaty.

What in fact the majority leader tried to bring before the Senate today is a bill which was introduced in the Senate by the Senator from Louisiana and the Senator from Alaska, and in the House by Congressman GILCHREST. This bill would amend, I would say gut, the existing law that defines the term "dolphin safe" for purposes of the sale of tuna in this country.

The agreement that the bill relates to is neither a treaty nor an international agreement. The so-called Panama Declaration is only a political statement—an agreement to agree in the future on a binding international agreement.

How do we know the Panama Declaration is not a treaty? A treaty is a binding commitment in international law which requires the parties to abide by its provisions. It is a legal instrument imposing legal obligations.

In our system of law, a treaty has the same standing as a statute passed by Congress—they are both the law of the land. This principle is embodied in article VI of the United States Constitution, which states:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land . . .

The principle that treaties are the law of the land was confirmed by the Supreme Court in 1920 in the case of *Missouri versus Holland*, in which Justice Oliver Wendell Holmes wrote:

By Article VI, treaties made under the authority of the United States . . . are declared the supreme law of the land.

Another fundamental constitutional doctrine relates to how the law of the land principle operates—the last in time doctrine, which means that if a treaty and a statute are in conflict, then the last one to be put into effect governs. So clearly—if the Panama Declaration were a binding international agreement, there would be no need for the bill the majority leader tried to take up.

In fact, the very wording of the Panama Declaration itself reveals that it is not a binding international agreement. In the second paragraph of the document, it reads:

The governments . . . announce their intention to formalize . . . The La Jolla Agreement . . . as a binding legal instrument.

In addition, the declaration sets forth a series of principles which will ultimately be contained in this yet-to-be-drafted international agreement. But these principles are so vague and largely hortatory that they cannot possibly be read as imposing legal obligations.

If there were any doubt that the United States did not intend to be bound by this "declaration", we need only turn to the statement issued by the U.S. representative to the meeting in Panama.

The U.S. Administration supports this initiative which is an important step on the road to a permanent, binding instrument

. . . The initiative . . . is contingent upon changes in U.S. legislation . . . The U.S. Administration needs to work with our Congress on this . . . We do not want to mislead anyone here as to what the final outcome of that process might be.

It is clear that the administration was not binding the United States to anything, other than to work with the Congress to enact this legislation.

That is the commitment of the United States that the Senator from Louisiana talked about. It is nothing more. If we don't pass this bill, no binding agreement will have been broken, no international treaty obligation will have been violated.

The other nations present during the discussions in Panama surely understood this. They are fully aware that we have a government with co-equal branches, and that any changes in the tuna labelling laws, as envisioned by the Panama Declaration, require the consent of Congress.

The argument that rejection of this bill amounts to a violation of an international agreement is a red herring. There is no treaty and no international agreement in force for us to break.

Finally, on this point, Mr. President, let me ask unanimous consent to insert in the RECORD two letters: a letter sent by Senator BIDEN and myself to the State Department on the question of whether the Panama Declaration is a binding international agreement, and the State Department's response to us on that question. The State Department letter reads, in part:

Thus, the Panama Declaration itself is not a legally binding international agreement, but rather a commitment to conclude such an agreement. . . . Fulfillment of that commitment is expressly contingent upon—and only upon—certain changes in U.S. law.

So, Mr. President—This declaration may be a political commitment, but it is most definitely NOT a legal obligation.

In summary, the arguments made by the supporters of the Stevens-Breaux-Gilchrest legislation—arguments of fact as well as arguments of law—are unsupportable. The bill is not needed for any convincing scientific or environmental purpose, and is not needed to meet any binding obligation of the United States.

In summary, Mr. President, in 1990, Senator BIDEN and I wrote a law called the Dolphin Protection Act. What happens is that when the tuna fishermen go out, they follow the dolphin because the dolphin follow the tuna. They cast a purse seine net, and they kill the dolphin along with the tuna.

We have taken the dolphin kill since 1990 down from 60,000 a year to 3,000 a year. We do not think there is any need at all to now allow this purse seining on dolphin. What this negotiation with Mexico would do is allow the Mexican fishermen to bring in their tuna. It is not dolphin-safe and the dolphin-safe label on the tuna can would lose all its meaning.

I very, very strongly object, not only in my behalf, but on behalf of Senator

BIDEN, and I will also say, 85 environmental organizations, including the Humane Society, the Sierra Club and a host of others.

I appreciate the majority leader giving me this opportunity to explain why I object strongly, and I will do everything I can to make sure this bill never does become the law of the land.

I do object.

The PRESIDING OFFICER. Objection is heard.

#### UNANIMOUS-CONSENT REQUEST— H.R. 1296

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of the conference report to accompany the Presidio parks bill; that the conference report be considered as having been read; and that immediately following the reporting by the clerk, the conference report be immediately recommitted to the conference committee.

Mr. FORD. Mr. President, on behalf of this side of the aisle, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, if I can be heard further on this, time has not run out. There is still time for us to get this conference report that affects 41 States and contains 126 parks and public land provisions. The Senate must recommit the conference report back to the conference committee in order to correct a tax matter which has now been cleared, I believe, in the House.

So it would allow us to get this very important piece of legislation through the process. If there is some other way it can be done, we have a couple of days, perhaps, in which we can pursue it.

I, again, repeat my great concern that this major preservation legislation, affecting so many areas, so many States appears to be in a position of being killed for no apparent reason that I can figure out. In fact, when I first talked to my Democratic colleagues about this, I think they were surprised that it was being objected to. I know the Presidio provision, for instance, is supported by the Senators from California.

For some reason, the administration has problems with this bill. They object, for instance, to the project in Utah called Snow Basin, which is an important part of where the Olympics will be held. I asked Chief of Staff Leon Panetta last night, "Do you want to be involved in stopping a project which has been broadly supported in the area and is going to be critical to the next winter Olympics?" I think he didn't realize that it had that ramification. But for some reason, it continues to be objected to.

Mr. President, I yield to the Senator from Alaska.

Mr. MURKOWSKI. I wonder if the Senator will yield for just a moment, because clearly the Utah Olympics and the Snow Basin exchange that is in